

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

KATHLEEN ROCHE, D.C.,)
individually and on behalf of others)
similarly situated, d/b/a)
BACK DOCTORS CHIROPRACTIC,)

Plaintiff,)

vs.)

Case No. 07-CV-0875-MJR-PMF

ZENITH INSURANCE COMPANY,)

Defendant.)

ORDER DISMISSING CASE

REAGAN, District Judge:

On July 11, 2007, Roche filed this putative class action in the Central District of California (Doc. 2). On December 7, 2007, that court granted Roche's motion to transfer the case to the Southern District of Illinois (Doc. 38). On March 21, 2008, Roche filed an amended complaint alleging breach of contract (Count 1), unjust enrichment (Count 2), and violations of the Illinois Consumer Fraud and Deceptive Businesses Act (Count 3) (Doc. 60).

Roche filed a notice of voluntary dismissal on August 4, 2009 (Doc. 137). Though this is a putative class action, no class has been certified in this case. Therefore, **FEDERAL RULE OF CIVIL PROCEDURE 41** governs this dismissal, rather than **Rule 23(e)**. **Rule 41(a)(1)(A)(i)** provides that a plaintiff may dismiss an action without order of the Court "by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment."

Such is the case here, as the Defendant has not filed an answer or summary judgment motion.¹

Accordingly, pursuant to Rule 41 and the Plaintiff's notice (Doc. 137), the Court hereby **DISMISSES** Kathleen Roche's individual claims against Zenith Insurance Company **without prejudice**. This case is now closed.

IT IS SO ORDERED.

DATED this 7th day of August 2009.

s/ Michael J. Reagan
Michael J. Reagan
United States District Judge

¹ Even though it appears that Roche is permitted to voluntarily dismiss this case as a matter of right under Rule 41, the Court initially solicited a response from the Defendant (*see* Docs. 136 & 138). However, defense counsel has informed the Court that the Defendant does not oppose voluntary dismissal and does not intend to file any response.